

AMENDED IN SENATE APRIL 16, 2007

SENATE BILL

No. 831

Introduced by Senator Lowenthal

February 23, 2007

An act to amend Section ~~2890.2~~ of 2890 of, to add Section 2890.3 to, and to add Article 6 (commencing with Section 2899) to Chapter 10 of Part 2 of Division 1 of, the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 831, as amended, Lowenthal. Telecommunications: *billing*: mobile telephony service.

(1) Existing law specifically requires a person, corporation, or billing agent to provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. Existing law establishes a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunication services, evidence that a call was dialed is prima facie evidence of authorization.

This bill would authorize a subscriber to present a person, corporation, or billing agent that has charged the subscriber for a direct dialed telecommunications service with evidence to rebut the prima facie evidence that the direct dialed telecommunications service was authorized, including, but not limited to, evidence that a call was dialed using a lost or stolen telecommunications device. The bill would prohibit a billing telephone company from billing for a person, corporation, or billing agent, unless that person, corporation, or billing agent complies with those rebuttable presumption provisions. The bill

would limit a subscriber's liability for unauthorized use to usage occurring before notification of the service provider, and would prohibit a subscriber's liability from exceeding \$50.

The bill would require a person, telephone corporation, or billing agent that provides a telecommunications bill to include with each bill a prescribed statement of the subscriber's rights if billed for unauthorized charges. The bill would authorize the commission to develop, by rule, standard language to be used for the statement.

(2) Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service (cellular), broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but a state or local government is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Existing law authorizes the Public Utilities Commission to regulate telecommunication services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide customer services. Existing law requires a provider of mobile telephony services to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage.

This bill would require that providers of mobile telephony service extend to new customers a minimum 30-day grace period, or 10 days after receipt of the first bill, whichever is later, during which the customer may rescind the agreement, without cost or penalty, if the customer finds that the service quality is unsatisfactory, except that the customer would be required to pay for those services used before the cancellation of the agreement.

The bill would provide for the reduction of early termination fees applicable after the grace period, proportional to the elapsed portion of the agreement term. The bill would prohibit a 3rd-party vendor of mobile telephony service from charging a subscriber any early termination fee payable to the 3rd-party vendor for canceling an agreement for mobile telephony service before the end of the term of the agreement.

The bill, except as specified, would prohibit a mobile data or mobile telephony service provider from changing a subscriber's agreement in a way that results in higher rates or charges or more restrictive terms or conditions. The bill would prohibit the term of an agreement from exceeding 2 years.

~~The Public Utilities Act defines "mobile telephony service" for the purposes of that act. Other existing law regulating telephone corporations requires a provider of mobile telephony services to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage, and on the subscriber's text messaging and Internet usage and charges. That subscriber information provision includes by reference the act's definition of mobile telephony service.~~

~~This bill would delete the cross-reference to the act, and, instead, set out an identical definition of mobile telephony service for the purposes of the subscriber information provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2890 of the Public Utilities Code is
2 amended to read:

3 2890. (a) A telephone bill may only contain charges for
4 products or services, the purchase of which the subscriber has
5 authorized.

6 (b) ~~When~~ If a person or corporation obtains a written order for
7 a product or service, the written order shall be a separate document
8 from any solicitation material. The sole purpose of the document
9 is to explain the nature and extent of the transaction. Written orders
10 and written solicitation materials shall be unambiguous, legible,
11 and in a minimum 10-point type. Written or oral solicitation
12 materials used to obtain an order for a product or service shall be
13 in the same language as the written order. Written orders ~~may~~ shall
14 not be used as entry forms for sweepstakes, contests, or any other
15 program that offers prizes or gifts.

16 (c) The commission ~~may~~ ~~only~~ permit a subscriber's local
17 telephone service to be disconnected *only* for nonpayment of
18 charges relating to the subscriber's basic local exchange telephone
19 service, long-distance telephone service within a local access and

1 transport area (intraLATA), long-distance telephone service
2 between local access and transport areas (interLATA), and
3 international telephone service.

4 (d) (1) A billing telephone company shall clearly identify, and
5 use a separate billing section for, each person, corporation, or
6 billing agent that generates a charge on a subscriber's telephone
7 bill. A billing telephone company ~~may~~ *shall* not bill for a person,
8 corporation, or billing agent, unless that person, corporation or
9 billing agent complies with paragraph (2) *and subdivision (e)*.

10 (2) Any person, corporation, or billing agent that charges
11 subscribers for products or services on a telephone bill shall do all
12 of the following:

13 (A) Include, or cause to be included, in the telephone bill the
14 amount being charged for each product or service, including any
15 taxes or surcharges, and a clear and concise description of the
16 service, product, or other offering for which a charge has been
17 imposed.

18 (B) Include, or cause to be included, for each entity that charges
19 for a product or service, information with regard to how to resolve
20 any dispute about that charge, including the name of the party
21 responsible for generating the charge and a toll-free telephone
22 number or other ~~no-cost~~ *no-cost* means of contacting the entity
23 responsible for resolving disputes regarding the charge and a
24 description of the manner in which a dispute regarding the charge
25 may be addressed. Each telephone bill shall include the appropriate
26 telephone number of the commission that a subscriber may use to
27 register a complaint.

28 (C) Establish, maintain, and staff a toll-free telephone number
29 to respond to questions or disputes about its charges and to provide
30 the appropriate addresses to which written questions or complaints
31 may be sent. The person, corporation, or billing agent that generates
32 a charge may also contract with a third party, including, but not
33 limited to, the billing telephone corporation, to provide that service
34 on behalf of the person, corporation, or billing agent.

35 (D) Provide a means for expeditiously resolving subscriber
36 disputes over charges for a product or service, the purchase of
37 which was not authorized by the subscriber. ~~In~~

38 (e) (1) In the case of a dispute, there is a rebuttable presumption
39 that an unverified charge for a product or service was not

1 authorized by the subscriber and that the subscriber is not
2 responsible for that charge. ~~With~~

3 (2) *With* regard to direct dialed telecommunications services,
4 evidence that a call was dialed is prima facie evidence of
5 authorization. If recurring charges arise from the use of those
6 subscriber-initiated services, the recurring charges are subject to
7 this section.

8 (3) *A subscriber may present a person, corporation, or billing*
9 *agent that has charged the subscriber for a direct dialed*
10 *telecommunications service with evidence to rebut the prima facie*
11 *evidence that the direct dialed telecommunications service was*
12 *authorized, including, but not limited to, evidence that a call was*
13 *dialed using a lost or stolen telecommunications device.*

14 ~~(e)~~

15 (f) If an entity responsible for generating a charge on a telephone
16 bill receives a complaint from a subscriber that the subscriber did
17 not authorize the purchase of the product or service associated
18 with that charge, the entity, not later than 30 days from the date
19 on which the complaint is received, shall verify the subscriber's
20 authorization of that charge or undertake to resolve the billing
21 dispute to the subscriber's satisfaction.

22 ~~(f)~~

23 (g) *A subscriber's liability for unauthorized use is limited to*
24 *usage occurring before notification of the service provider. A*
25 *subscriber's liability shall not exceed fifty dollars (\$50).*

26 (h) For purposes of this section, "billing agent" is the
27 clearinghouse or billing aggregator.

28 ~~(g) This section shall become operative on July 1, 2001.~~

29 SEC. 2. *Section 2890.3 is added to the Public Utilities Code,*
30 *to read:*

31 2890.3. (a) *As used in this section:*

32 (1) *"Billing agent" means the clearinghouse or billing*
33 *aggregator.*

34 (2) *"Unauthorized charges" include charges incurred using a*
35 *lost or stolen telecommunications device.*

36 (b) (1) *Notwithstanding any other provision of law, a person,*
37 *corporation, or billing agent that provides a telecommunications*
38 *bill shall include with each bill a clear and conspicuous statement*
39 *of a subscriber's rights if billed for unauthorized charges.*

1 (2) *The statement shall disclose that the subscriber will be*
2 *notified of the results of any investigation of a billing complaint*
3 *within 30 days from the date on which the complaint was received.*

4 (c) *The commission may develop, by rule, standard language*
5 *to be used for the statement required by subdivision (b) that*
6 *describes with specificity only the following information:*

7 (1) *The subscriber's rights if billed for unauthorized charges.*

8 (2) *The subscriber's right to be notified of the results of any*
9 *investigation of a billing complaint within 30 days from the date*
10 *on which the complaint was received.*

11 SEC. 3. *Article 6 (commencing with Section 2899) is added to*
12 *Chapter 10 of Part 2 of Division 1 of the Public Utilities Code, to*
13 *read:*

14
15 *Article 6. Mobile Telephony Service*
16

17 2899. *For purposes of this article, the following terms have*
18 *the following meanings:*

19 (a) *"Mobile telephony service" means commercially available*
20 *interconnected mobile phone service that provides access to the*
21 *public switched telephone network (PSTN) via a mobile*
22 *communication device employing radiowave technology to transmit*
23 *calls, including cellular radiotelephone, broadband Personal*
24 *Communications Services (PCS), and digital Specialized Mobile*
25 *Radio (SMR). "Mobile telephony service" does not include mobile*
26 *satellite service or mobile data service used exclusively for the*
27 *delivery of nonvoice information to a mobile device.*

28 (b) *"Month-to-month account" means an agreement for mobile*
29 *telephony service where the customer is not required to purchase*
30 *more than one month of service.*

31 (c) *"Prepaid account" means an agreement for mobile telephony*
32 *service for a specified dollar amount less than one hundred dollars*
33 *(\$100) that the customer pays in full before receiving service.*

34 2899.1. (a) *Each provider of mobile telephony service shall*
35 *extend to new service customers, without cost or penalty, a grace*
36 *period of at least 30 days after executing the agreement, or 10*
37 *days after receipt of the first bill, whichever is later, for customers*
38 *to cancel the agreement and terminate service, if the customer*
39 *finds that the service quality is unsatisfactory, except that the*
40 *customer shall pay for those services used before the cancellation*

1 of the agreement. Each new mobile telephony service agreement
2 shall provide reasonable notice of this grace period and the right
3 of the customer to cancel the agreement if the customer finds that
4 the service quality is unsatisfactory.

5 (b) Each provider of mobile telephony service shall extend to
6 existing customers, without cost or penalty, a grace period of at
7 least 30 days after executing an agreement for additional service,
8 renewal of service, or modification of service, for customers to
9 cancel the agreement and terminate service, if the customer finds
10 that the service quality is unsatisfactory, except that the customer
11 shall pay for those services used before the cancellation of the
12 agreement. Each new mobile telephony service agreement with
13 an existing customer shall provide reasonable notice of this grace
14 period and the right of the customer to cancel the agreement if the
15 customer finds that the service quality is unsatisfactory.

16 (c) This section does not apply to a month-to-month account or
17 a prepaid account.

18 2899.2. If an agreement for mobile telephony service is
19 canceled after the grace period and before the end of the term of
20 the agreement, any early termination fee or penalty shall be
21 reduced by a fraction equivalent to the number of months in the
22 agreement term that have elapsed over the total number of months
23 in the agreement term.

24 2899.3. A third-party vendor of mobile telephony service shall
25 not charge a subscriber any early termination fee or penalty
26 payable to the third-party vendor for canceling an agreement for
27 mobile telephony service before the end of the term of the
28 agreement. This section does not prevent any provider of mobile
29 telephony service from charging an early termination fee.

30 2899.4. (a) A mobile data or mobile telephony service provider
31 shall not change the terms of the agreement of a subscriber in a
32 way that results in higher rates or charges or more restrictive
33 terms or conditions, unless all of the following conditions are met:

34 (1) The change is permitted by law.

35 (2) The subscriber is provided with at least 30 calendar days
36 prior written notice before the effective date of the change, during
37 which time the subscriber may terminate service before the effective
38 date of the change. The written notice shall include the following
39 statement in at least 12-point boldface type: "The terms of your
40 agreement have changed." Following this heading shall be a clear,

1 *concise, and conspicuous statement explaining the change in the*
2 *rate, charge, term, or condition in the agreement of the subscriber.*

3 *(3) If the subscriber's agreement contains any early termination*
4 *fee or charge provision, any early termination fee or charge is*
5 *waived and shall not be collected by the service provider if the*
6 *subscriber elects to terminate service pursuant to paragraph (2).*

7 *If the subscriber's agreement contains any early termination fee*
8 *or charge, the prior written notice shall, in addition to the notice*
9 *required in paragraph (2), include the following statement in at*
10 *least 12-point boldface type: "You have a right to terminate service*
11 *without penalty." Following this heading shall be a clear, concise,*
12 *and conspicuous statement explaining the number of days that the*
13 *subscriber has to terminate service without incurring a fee or*
14 *charge.*

15 *(b) Subdivision (a) does not apply to either of the following:*

16 *(1) If the subscriber initiates the request to change the terms or*
17 *conditions of the contract, including, but not limited to, a request*
18 *for additional services not offered under the existing agreement.*

19 *(2) If there is an increase in a tax or fee that the mobile data or*
20 *mobile telephony service provider is required to collect from the*
21 *subscriber and remit to a governmental entity.*

22 *2899.5. The term of an agreement for mobile telephony service*
23 *shall not exceed two years.*

24 *2899.6. The provisions of this article are severable. If any*
25 *provision of this article or its application is held invalid, that*
26 *invalidity shall not affect other provisions or applications that can*
27 *be given effect without the invalid provision or application.*

28 ~~SECTION 1. Section 2890.2 of the Public Utilities Code is~~
29 ~~amended to read:~~

30 ~~2890.2.—(a) A provider of mobile telephony services shall~~
31 ~~provide subscribers with a means by which a subscriber can obtain~~
32 ~~reasonably current and available information, as determined by~~
33 ~~the provider, on the subscriber's calling plan or plans and service~~
34 ~~usage, including roaming usage and charges.~~

35 ~~(b) A provider of mobile telephony services shall provide~~
36 ~~subscribers with a means by which a subscriber can obtain~~
37 ~~reasonably current and available information, as determined by~~
38 ~~the provider, on the subscriber's text messaging and Internet usage~~
39 ~~and charges.~~

1 ~~(e) Each provider of mobile telephony services shall inform~~
2 ~~subscribers at the time service is established of the availability of~~
3 ~~the information described in subdivisions (a) and (b) and the~~
4 ~~manner in which it may be obtained.~~

5 ~~(d) For purposes of this section, “mobile telephony service”~~
6 ~~means commercially available interconnected mobile phone~~
7 ~~services that provide access to the public switched telephone~~
8 ~~network (PSTN) via mobile communication devices employing~~
9 ~~radiowave technology to transmit calls, including cellular~~
10 ~~radiotelephone, broadband Personal Communications Services~~
11 ~~(PCS), and digital Specialized Mobile Radio (SMR). “Mobile~~
12 ~~telephony services” does not include mobile satellite telephone~~
13 ~~services or mobile data services used exclusively for the delivery~~
14 ~~of nonvoice information to a mobile device.~~